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ABSTRACT

On the premise that legal research in mass communication should be scientific and grounded in theory based upon available knowledge about how the world works, it is argued in this paper that the research paradigm used by most communication-law scholars is inadequate. In the first section of the paper the current, "institution-centered" paradigm that structures most communication-law scholars' teaching and research is described. The argument of the second part of the paper points out some of the major flaws of this paradigm--its focus on legal rules and the institutions that make them fail to account for factors that are vitally important to understanding the reality of legal disputes. This section also outlines an alternative "disputes focuses" paradigm to replace or complement the current one. In the third section of the paper some theoretical and methodological implications of this paradigm shift are discussed. (HTH)

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# A NEW PARADIGM FOR LEGAL RESEARCH IN MASS COMMUNICATION

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A NEW PARADIGM FOR LEGAL RESEARCH IN MASS COMMUNICATION

> "The Parisian police," he said, "are exceedingly able in their way. They are perservering, ingenious, cunning, and thoroughly versed in the knowledge which their duties seem chiefly to demand. Thus, when G---- detailed to us his mode of searching the premises at the Hotel D----, I felt entire confidence in his having made a satisfactory investigation so far as his labors extended."
>
> "So far as his labors extended?" said I.
>
> "Yes," said Dupin. "The measures adopted were not only the best of their kind, but carried out to absolute perfection. Had the letter been deposited within the range of their search, these fellows would, beyond a question, have found it."
>
> I merely laughed, but he seemed quite serious in all that he said.
>
> "The measures, then," he continued, "were good in their kind and well executed; their defect lay in their being inapplicable to the case and to the man...."
>
> -- from "The Purloined Letter" by Edgar Allen Poe

Introduction

This paper will suggest that most communication-law scholars are like G----, the unnamed prefect of police in "The Purloined Letter" (Poe, 1928). G---- assumed that thieves hide contraband in hard-to-find places; communication-law scholars assume, often implicitly, that court decisions about matters such as libel and the Fairness Doctrine are important influences on the day-to-day behavior of journalists and journalistic organizations.

Such assumptions -- theoretical assumptions about how the world works, really -- have clear implications for the methods seekers like G---- and communication-law scholars use to solve their problems. Simply put, the ability of a search (or research) to provide meaningful solutions to real-

world problems is dependent upon the validity of the theoretical assumptions that structure the search. After all, such assumptions determine not only where to look, but also what methods are appropriate to the search.

We need not resort to the fiction of Poe to demonstrate the point; the history of science is full of examples of flawed conclusions about the world stemming directly from faulty assumptions (see, e.g., Kuhn, 1970, and March, 1970).

This paper will argue that the research paradigm used by most communication-law scholars is inadequate, and will suggest a new paradigm to supplant, or at least complement, it. Specifically, the first section of this paper will attempt to sketch out the paradigm that structures most communication-law scholars' teaching and research. The second section will point out some of the major flaws of this paradigm, and will outline an alternative paradigm. The third will discuss some theoretical and methodological implications of a paradigm shift, and will suggest ways the alternate paradigm could be applied to pressing questions in communication law.

Underlying this paper's arguments is the notion that legal research in mass communication should be scientific. Research methods should be grounded in theory; theories should be based upon available knowledge about how the world works. It is knowledge about how the world really works, rather than opinions about how scholars think it should work, that will result in research that is more meaningful to understanding how law and society influence each other. In addition, such research will be all the more useful to communication-law scholars' constituencies in the journalistic and legal professions.

In other words, this paper has an empirical bias, which seems like a reasonable prejudice for scholars who hope to make correct statements about the role law plays in mass communication. As fellow scholar Sherlock Holmes said to the befuddled Dr. Watson in "A Scandal in Bohemia": "It is a capital mistake to theorise before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts" (Doyle, 1892).

Facts suggest theories, which can be tested by research methods appropriate to the question at hand. The results of such tests may lead to modification of theory, with the ultimate goal of greater understanding of how the world works.

## The Existing Paradigm

Kuhn's concept of "normal science" (1970) is cited fairly often these days. Legal scholars (e.g., Tushnet, 1981b) as well as political communication researchers (e.g., Chaffee, 1984; Hochheimer, 1984) talk about normal science, generally disparagingly.

Kuhn defines normal science as "research firmly based upon one or more past scientific achievements, achievements that some particular scientific community acknowledges for a time as supplying the foundation for its further practice" (Kuhn, 1970:10). This means that the research methods and the often-implicit theoretical assumptions that have led to the past achievements will continue to be the tools of normal science. As such, they constitute the received paradigm of a given discipline.

Research and teaching in communication law are guided by such a paradigm. Traditionally, such activity focuses on the work of formal legal institutions -- especially appellate courts. The typical research

method is textual analysis of legal rules, although quantitative analysis of various attributes of legal institutions and legal decision-makers is not uncommon.

That formal legal institutions are the accepted units of analysis under the existing paradigm is apparent from how law and legal research methods are taught in journalism and mass communication programs. Such considerations are revealing, because textbooks and graduate training in research methods are the principal means by which a paradigm is passed from one generation of scholars to the next (Kuhn, 1970).

It is clear that the leading texts in communication law (Carter et al., 1985; Francois, 1982; Franklin, 1982; Gillmor and Barron, 1984; Nelson and Teeter, 1982; Overbeck and Pullen, 1985; Pember, 1984) focus almost exclusively on court opinions to teach students about what the law is and what it means. Four of the texts are more or less casebooks along the traditional law-school model (Carter et al., 1985; Franklin, 1982; Gillmor and Barron, 1984; Nelson and Teeter, 1982); they rely heavily on excerpts from appellate court opinions. The two texts that offer sections on legal research (or a variant of that theme such as "Finding the Law") do little more than tell students how to find the opinions of courts and other judicial bodies (Gillmor and Barron, 1984; Overbeck and Pullen, 1985).

In short, teaching in communication law follows an institution-centered paradigm. The paradigm defines as appropriate subjects for study the work of society's formal law-making or law-interpreting institutions -- generally courts, but also administrative bodies and legislatures. As such, communication law is taught the same way basic subjects are taught in American law schools (Schlegel, 1984; Tushnet, 1981a).

As might be expected, graduate training in communication law research methods also follows the traditional law-school model. Students in many graduate communication law classes are advised to buy methods books written for students in law schools (e.g., Cohen, 1978; Statsky, 1982), despite the fact that such books do not deal specifically with communication law and despite the fact that students in graduate programs in mass communications are not being trained to practice law.

The best overview of research methods in communication law can be found in book chapters by Gillmor and Dennis (1975; 1981 -- the latter chapter largely supercedes the earlier one). Gillmor and Dennis define their subject in a traditional manner: "cases, statutes, and constitutions are the primary stuff of the law" (1981:323). In terms of acceptable methods of analyzing legal materials, though, they are more open-minded. They devote several pages of the 1981 chapter to what they call "empirical and behavioral legal research in mass communication" (1981:330-337).

The quantitative strategies mentioned in those several pages, however, hew closely to the received paradigm's focus on formal legal institutions. For example, Gillmor and Dennis discuss studies that attempt to explain the behavior of judges (1981:334) and that examine news coverage of judicial institutions (1981:330). Other communication-law scholars who have advocated quantitative methods also hang on to the institution-centered approach (e.g., Padgett, 1983; Schwartz, 1984. For general overviews of how quantitative methods can be used to shed light on traditional legal issues, see Loh, 1984, and Monahan and Walker, 1985).

Accordingly, it is no surprise that much of the quantitative research in communication law has focused on the judiciary or other law-making

institutions (e.g., Anderson and Murdock, 1981; Franklin, 1980; Franklin, 1981a; Gaziano, 1978; Hale, 1984; Mehra, 1982; Miller et al., 1983; Stempel, 1982).

Also closely related to the institutional paradigm are empirical studies focusing on problems defined as significant by major legal institutions. Very little empirical research on the effects of pretrial publicity was conducted before the Supreme Court's decision in the Sam Sheppard case (Sheppard v. Maxwell, 1966). In the years immediately following, however, scores of studies on the topic were published (for reviews of the research, see Buddenbaum et al., 1981; Bush, 1970; Connors, 1975; and Wilcox, 1968). A similar phenomenon, though on a much smaller scale, took place with respect to cameras in the courtroom after states began widespread experiments in the mid-1970s (see, e.g., Barber, 1983; Hoyt, 1977; Lancaster, 1984; Netteburg, 1980; Slater and Hans, 1982).

The point of this quick review is to demonstrate that the existing paradigm for teaching and research in communication law limits scholarly inquiry to matters that deal directly with the work of society's formal law-making institutions. Gillmor and Dennis reinforce the point. While acknowledging that research focusing on areas other than formal institutions might result in "a better understanding of law and legal institutions," they nonetheless contend that "this is not legal research per se" (1981:321).

In stark outline, then, there is the existing paradigm. Legal rules and the institutions that produce them are worthy of study by communication-law scholars. Specifically defined as <u>outside</u> the field of the communication-law scholar are areas of research that could add to an understanding of how law actually works.

Flaws of the Existing Paradigm, and an Alternative

If communication-law research were intended to be nothing more than the study of philosophy or moral principles, its exclusive focus on legal rules and institutions could be justified. This paper assumes, however, that communication-law scholars want to do -- and should do -- more: contributing to basic knowledge about how law and society affect each other, for example, and helping journalists and others avoid media-related disputes (or at least resolve them before they get to court).

A close look at the reality of how media-related disputes arise will help set the context for this paper's discussion of the flaws of the existing paradigm. The process will be illustrated by reference to a situation in which someone is unhappy about something that has been published about him or her. In theory, such a situation could lead to a lawsuit alleging libel, invasion of privacy, intentional or negligent infliction of emotional distress, or a combination of those or related torts. The process to be outlined is not limited to libel-like situations. It could easily be adapted to other kinds of media-related disputes (e.g., access to information, Fairness Doctrine matters).

A dispute must be born and then survive a complex process of dispute definition and processing before it can reach a court of law. Although conceptual work in dispute processing is a relatively recent academic enterprise (see, e.g., Felstiner et al., 1981; Fitzgerald, 1982; Ladinsky et al., 1979; Ladinsky and Susmilch, 1981; Ladinsky and Susmilch, 1983; Mather and Yngvesson, 1981; Miller and Sarat, 1981), the pre-litigation stages of the process are worth considering in some detail.

As we move through the several steps of the process, which is diagrammed in Figure A, keep in mind the hypothetical potential plaintiff in a possible libel-like situation.

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Figure A About Here

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STEP 1 -- Unless a media organization publishes information about the potential plaintiff, no actionable dispute of the kind mentioned above arises. Before such a dispute can arise, then, material about the potential plaintiff must be published by a news organization.

STEP 2 -- If a media organization publishes an item about a person, a potential dispute is born only if the person has some kind of problem with the item. A "problem" occurs when the subject of a published item "senses that something is amiss" (Ladinsky and Susmilch, 1981:2). This is the stage of the disputing process that Felstiner et al. (1981) call "naming." In other words, the person is somehow unhappy with how he or she has been portrayed by the media organization.

Of course, if the person mentioned in the item has no problem with how he or she was portrayed, there is no dispute.

STEP 3 -- People who are unhappy with how they have been portrayed in the media may or may not perceive that they have a <u>grievance</u> against the media organization. A grievance, according to Ladinsky and Susmilch, is "a belief that one has a right, an entitlement, to corrective action with regard to a problem" (1981:2). It is the stage of the process that Felstiner et al. (1981) call "blaming."

Step 2 and step 3 are conceptually distinct; there are all sorts of reasons why people who are unhappy with how they have been portrayed in the media might not perceive that they have a grievance. For example, they may perceive that the problem is their fault, not the fault of the media, or they may perceive that they have no right to second-guess media judgments about how to portray people. Felstiner et al. (1981) and Coates and Penrod (1981) discuss these and similar theoretical issues in some depth.

STEP 4 -- It cannot be assumed that all people who perceive that they have a grievance against the media will actually make a claim for redress of that grievance. Making a claim (by seeking a correction, retraction, or other compensation from the media organization) is only one of three possible courses of action: taking no action at all and taking private (nonclaim) action are the other two possibilities.

Taking no action needs little explanation. The person who thinks he or she has a grievance may decide (for whatever reason) not to pursue the matter. Ladinsky and Susmilch (1981) use the phrase "lumpits" to describe such people.

Taking private, or nonclaim, action happens when people who perceive they have a grievance do something on their own to gain satisfaction. Examples might include cancelling their subscriptions to the newspaper that portrayed them in a way they didn't like, stealing issues of the offending newspaper from a coin-operated box, or merely making disparaging comments about the media organization to friends and acquaintances.

In any case, a dispute dies if the person who perceives himself or herself as aggrieved fails to make a claim.

It should be noted that consumer research suggests that most people do not distinguish between the grievance and the claiming stages of the process (Ladinsky and Susmilch, 1981). Because the two are conceptually distinct, however, both have been kept in this theoretical model.

STEP 5 -- If a person makes a claim against the offending media organization and receives satisfaction, the dispute ends. Satisfaction does not mean that the person who made a claim received exactly what he or she asked for. It means only that the aggrieved subject would say he or she was satisfied with the media organization's response to the claim.

Only if the person is unhappy with the organization's response to the claim does the dispute stay alive.

STEP 6 -- If the media organization fails to satisfy the subject's claim, any of three things may happen. First, the subject may decide not to pursue the matter. Ladinsky and Susmilch call such people "clumpits," because they have made a claim before deciding to "lump it" (Ladinsky and Susmilch, 1981).

Second, the subject may take private action, similar to the private action described in step 4 above.

Third, the subject may take his or her unsatisfied claim to a third party for resolution. It is only such unsatisfied claims that survive to the next step in the disputing process.

STEP 7 -- People who take unsatisfied claims to third parties for resolution must choose the arena in which they want their claims to be heard. The choices can be viewed either as public arenas (courts, administrative agencies, etc.) or as private arenas (news councils or appeals to the public), although some scholars are critical of the public/private distinction (e.g., Macaulay, 1983).

Unsatisfied claims that are taken to private third parties seldom find their way into lawbooks. Only the disputes that survive the several informal stages of the disputing process end up in courts, thus becoming acceptable grist for the communication-law-research mill.

No research is available to tell us what proportion of media-related disputes survive past step 7 of the process and find their way to the courts, although the proportion probably is "tiny" (Herbert v. Lando et al., 1979:174). Empirical research in areas not related to mass communication, however, suggests that the proportion of disputes that gets to court is quite small (Best and Andreasen, 1977; Fitzgerald, 1982; Ladinsky and Susmilch, 1983; Trubek et al., 1983). There is no reason to believe that media-related disputes are so different from other kinds that a large proportion of them gets to court.

Nor is there any research to indicate how representative of all media-related disputes are those that actually get to court. But research in other areas indicates that formally litigated disputes are systematically different from disputes that do not go to court (Felstiner et al., 1981; Fitzgerald, 1982; Ladinsky and Susmilch, 1983; Trubek et al., 1983. See also Friedman and Macaulay, 1977; Galanter, 1983; Jacob, 1983; Macaulay, 1984a; Priest and Klein, 1984; Tate, 1983; and Webb et al., 1966), and there is no reason to believe similar differences do not exist with media-related disputes.

Research suggests that whether disputes survive to the litigation stage of the disputing process depends on a variety of non-legal factors, including the nature of the relationship between the disputants (Moore, 1973); the power differential between the disputants (Macaulay, 1984c); the differences between the resources available to each; and the nature of

the dispute itself, among other factors (see Felstiner et al., 1981, Ladinsky and Susmilch, 1983, and Trubek et al., 1983, for in-depth discussion of factors that affect whether a dispute takes a judicial trajectory).

Even in the relatively rare cases when disputes do end up before a court, there is no guarantee that judges and/or juries will follow the applicable legal rules (Overbeck and Pullen, 1985; Pember, 1984). And at the appellate court level, knowledge of how a court acted in one situation is not of much help in predicting how another court will act when faced with a similar dispute (Frank, 1949; Kairys, 1982).

In short, existing research in dispute-processing and other areas suggests:

(a) That relatively few disputes end up in courts;
(b) That those that do end up in courts are not representative of disputes generally;
(c) That the reasons some disputes end up in court and others do not have little to do with legal rules;
(d) That, in the few cases that do go to court, judges and/or juries may not follow established legal rules; and
(e) That stare decisis is a weak predictor of future outcomes.

If those conclusions are correct, then the existing paradigm's exclusive focus on legal rules and the institutions that make them fails to account for factors that are vitally important to understanding the reality of disputes. As Macaulay notes: "The received picture may reassure those who do not look closely, but empirical inaccuracy is a poor base for serious thought about the system" (1984c:i). Even such a traditional scholar as Thomas Emerson has noted that "(t)hose who warn us not to rely too much on legal forms are entirely correct that excessive emphasis can easily be placed on the role of law" (1970:5).

Despite such warnings, communication-law teachers and researchers continue to focus on appellate courts. For example, although Carter et

al. (1985) acknowledge that Supreme Court cases are the result of atypical disputes, their text emphasizes them.

> If Supreme Court cases are so relatively rare, one might ask, why not study the "ordinary" cases instead? The answer, of course, is that the way journalists and attorneys assess their chances of winning or losing a suit, and thereby decide whether to pursue it in court or to settle, is by applying the principles from decisions in the major cases (Carter et al., 1985:2).

The only problem with that line of reasoning is that journalists and attorneys do not necessarily -- or even often -- make their decisions in such a fashion (Kritzer, 1985; Macaulay, 1977; Macaulay, 1984b; Massing, 1985; Weinberg, 1983).

The simple fact is that legal rules seldom determine behavior. They may help shape behavior, but by themselves legal rules are rarely a sufficient explanation for how disputes evolve and are resolved (Macaulay, 1963).

Accordingly, communication-law scholars are confronted with an anomaly: the existing paradigm provides no theoretical or methodological tools to explain how most media-related disputes are resolved. Awareness of such an anomaly is a precondition for a paradigm shift (Kuhn, 1970).

Most communication-law scholars do not seem to be aware of the anomaly, although they really should be. Communication-law scholars who regularly read newspapers and magazines can find several actionable references in any given week, if they care to analyze media content from the point of view of a potential plaintiff. Yet very few of the people who could have a cause of action ever bring the matter to court.

This is not to say that legal rules play <u>no</u> role in determining the paths disputes will take. Even the most ardent opponents of the

institution-centered approach to legal scholarship acknowledge that legal rules can have some influence.

That influence, however, tends to be indirect and variable rather than direct and constant, according to legal sociologists. As Cavanagh and Sarat note: "Thinking about (courts') competence in terms of the ability of courts to reach and enforce decisions misses perhaps their most important function: providing a framework within which parties negotiate and bargain" (1980:373; see also Macaulay, 1983). The phrase many legal sociologists use to describe the typical mode of resolution of disputes is "bargaining in the shadow of the law" (Mnookin and Kornhauser, 1979).

In short, the effect of formal legal rules -- essentially, state-centered law (for a discussion of this concept, see Galanter, 1981) -- is conditioned in important and complex ways by a variety of social (writ large: political, cultural, economic, psychological, etc.) forces. Scholars cannot begin to understand how and why media-related disputes are resolved until they consider the effects of such forces. As Macaulay points out, "scholars often have failed to see the importance of private social control as it interacts with and affects the formal legal system" (1983:2).

As Friedman and Macaulay said in Law and the Behavioral Sciences:

> If any part of the legal process has been overstressed, it is the world of statutes and cases. There is a large body of legal scholarship -- some of it quite brilliant -- concentrating on doctrine and philosophy, but much of it rests on highly questionable assumptions about the connections between, say, the Uniform Commercial Code or the Supreme Court's decisions in the school prayer cases, and the behavior of those who use the law, or who are charged with enforcing and obeying it....People do not

> simply obey; they interact with legal officials. Law is made and carried out through a process of give and take. To make formal rules and formal institutions the center of attention, and to ignore the way events, values, and people affect them would distort the picture badly. (1977:32)

An obvious alternative to the institution-centered perspective on communication law is a disputes-focused approach. Specifically, that would mean developing (or borrowing) theories and concepts based on disputes, rather than the actions of rule-making institutions, as the central unit of analysis.

It is important to realize that the disputes-focused paradigm incorporates the existing paradigm. No theory of dispute resolution would be complete without an understanding of the role formal institutions play in shaping and resolving the relatively few disputes that come their way. For the most part, however, research carried out under a disputes-focused paradigm would concentrate on the early stages in the disputing process, which is where most disputes are settled.

The disputes-focused paradigm has appeal for several reasons. Among them:

(a) The existing paradigm focuses exclusively on the disputes at the top end of the process outlined in Figure A. Researchers who have democratic ideals (or at least democratic pretensions) may prefer a "bottom-up" approach that deals with representative disputes to the "top-down" approach of the existing paradigm (the terms are borrowed from Ladinsky and Susmilch, 1983:2).

(b) A disputes-focused approach would allow researchers to make use of the knowledge that has been accumulated over the years about how journalists and the people they cover actually interact (Drechsel, 1983; Dunn, 1969; Gitlin, 1980; Peters, 1980; Sigal, 1973; Tuchman, 1978). That

picture, of course, is far different from the idealized portrait of the journalists as fearless, objective heroes in pursuit of the truth, whatever the cost. Also illuminating to the communication-law researcher might be the substantial amount of sociological research into the legal profession. It turns out that laywers seldom act out the adversary ideal epitomized by Perry Mason. In fact, there is some evidence that lawyers are not always familiar with the law (Macaulay, 1979).

(c) By focusing on representative disputes -- the kind journalists and the people they write about routinely face -- the disputes-focused paradigm makes communication-law research more relevant to the professional constituencies of many communication-law researchers. The disputes-focused paradigm also offers the possibility of explaining why some disputes take a judicial trajectory but others do not. That clearly would be information useful to journalists and to lawyers who are practitioners of communication law, and may also have policy implications for the alleged crisis of litigation in the United States today (for a critique of the notion that there is such a crisis, see Galanter, 1983).

Theoretical and Methodological Issues

The disputes-focused paradigm offers communication-law scholars the theoretical tool they have lacked for predicting and explaining the resolution of all media-related disputes, not just those that end up in appellate courts. That in itself is a significant advance.

But the disputes-focused paradigm does more. It requires communication-law scholars to consider social forces as important legal variables. In so doing, the new paradigm helps rescue legal research from what Tushnet has called its "intellectual marginality" (1981a:1205).

Tushnet claims that the community of legal scholars "has been operating for years outside the main currents of signficant intellectual activity. I cannot imagine, for example, and intellectual history of contemporary America in which legal thought would play an important part" (1981a:1205). Schlegel is equally damning: "(T)eaching the (legal) rules is essentially a pointless exercise and writing about them as exciting an intellectual endeavor as straightening or occasionally rearranging pictures in an art gallery" (1984:108-109).

The theoretical advantages of the disputes-focused paradigm are one thing: whether disputes can be researched in any systematic way is another.

Court decisions and statutes, of course, are relatively easy to research. The raw data have already been gathered, and await examination in the local law library.

Disputes, on the other hand, are hard to research. The researcher must gather much of the pertinent data from participants in disputes (Felstiner et al., 1981). The perils of interview-based research are many (e.g., faulty recall, refusal to participate, imperfect questionnaire construction, sampling problems). Some information about disputes is available from institutional records, but the data in such documents are also imperfect (for discussions of data-collection strategies, see Kritzer, 1981, and Ladinsky and Susmilch, 1981).

That communication-law scholars traditionally have relied on available data such as court decisions is not surprising, given the nature of the existing paradigm. As Kuhn notes, "in the absence of a reason for seeking some particular form of more recondite information, early fact-gathering

is usually restricted to the wealth of data that lie ready to hand" (1970:15).

However, the disputes-focused paradigm generates hypotheses that can be tested only with empirical data, the kind that are not "ready to hand." Scholars worthy of the name are obligated to try to obtain the kinds of data required to test their hypotheses (Macaulay, 1977).

This paper does not pretend to offer a well-developed set of concepts and hypotheses. But a typical hypothesis generated by the new paradigm might be this: The more entwined disputants are in a semi-autonomous social field (the concept comes from Moore, 1973), the earlier in the disputing process (the one outlined in Figure A) they will solve their disputes.

Data to test such a hypothesis might come from content analysis of the news media (to identify potential disputes), interviews, and participant observation (to see how disputants really act, in contrast to how they say they act).

## Conclusion

This paper is not a call for a revival of Legal Realism. The Realists were concerned with the gap between legal rules and human behavior; that is not a central concern here (Abel, 1973).

But a great concern is that many communication-law scholars' uncritical acceptance of the institution-centered paradigm of legal research -- "a kind of legal Ptolemaism" (Galanter, 1981:1) -- has seriously harmed their ability to explain how the law works in practice.

There is reason for hope, however. Sessions on non-traditional methods of legal research at the 1984 and 1985 annual conventions of the

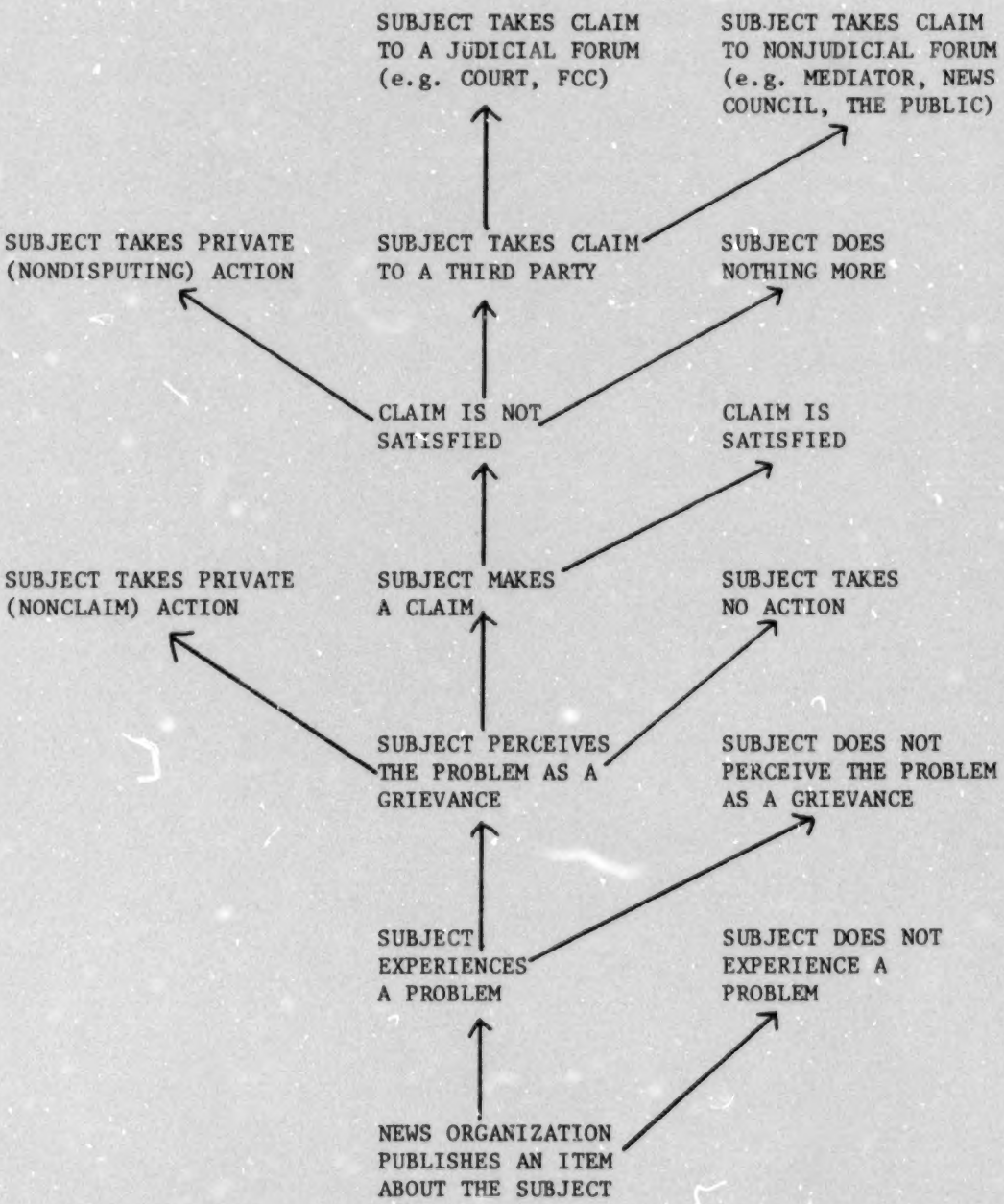
Association for Education in Journalism and Mass Communication suggest at least some dissatisfaction with the received paradigm. The maturing of a new generation of scholars is also promising; most of those who took part at the AEJMC sessions were untenured professors.

The awareness that legal rules do not control behavior is not new, even within the field of mass communication. In 1971, for example, John Stevens wrote: "For a visitor from another planet to try to understand our society from reading our constitutions and laws would be almost as misleading as his attempting to do the same from monitoring our network television fare" (1971:27).

Unfortunately, such insights in communication law have been the exception, rather than the rule. Just as traditional cops-and-robbers thinking prevented G---- from seeing the purloined letter that was in plain sight, the traditional legal-research paradigm has prevented communication-law scholars from perceiving the great bulk of media-related disputing activity.

With the theoretical and methodological tools the disputes-focused paradigm offers, however, researchers may be able to describe and explain the full range of the law's effects on media organizations and the people who work in them.

FIGURE A. Possible path from being mentioned in a news story to asserting in a judicial forum that the story injured you.


SUBJECT TAKES CLAIM TO A JUDICIAL FORUM (e.g. COURT, FCC)
SUBJECT TAKES CLAIM TO NONJUDICIAL FORUM (e.g. MEDIATOR, NEWS COUNCIL, THE PUBLIC)
SUBJECT TAKES PRIVATE (NONDISPUTING) ACTION
SUBJECT TAKES CLAIM TO A THIRD PARTY
SUBJECT DOES NOTHING MORE
CLAIM IS NOT SATISFIED
CLAIM IS SATISFIED
SUBJECT TAKES PRIVATE (NONCLAIM) ACTION
SUBJECT MAKES A CLAIM
SUBJECT TAKES NO ACTION
SUBJECT PERCEIVES THE PROBLEM AS A GRIEVANCE
SUBJECT DOES NOT PERCEIVE THE PROBLEM AS A GRIEVANCE
SUBJECT EXPERIENCES A PROBLEM
SUBJECT DOES NOT EXPERIENCE A PROBLEM
NEWS ORGANIZATION PUBLISHES AN ITEM ABOUT THE SUBJECT

Adapted from Ladinsky and Susmilch, 1981.

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